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ADMINISTRATION OF CRIMINAL LAW IN THE INFERIOR COURTS

By Hon. JULIUS M. MAYER,

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former Attorney-General of the State of New York.

My purpose is to endeavor to direct your attention to the well-known fact that more people are convicted in their relation with the criminal law, in the so-called inferior courts than in the superior courts, and therefore, that the state has a very large interest in the proper administration of these courts, not alone from the moral, but also from the economic aspect. This very week a commission, appointed in the State of New York to inquire into the conditions of these courts in what we call our cities of the first class, viz., New York, Buffalo and Rochester, has made its report. As I have been connected in an official capacity with that commission, much that I shall say will be based upon actual observation.

In the city of New York alone, the records show that in 1908, in that part known as the old city, or the Boroughs of Manhattan and Bronx, 175,000 persons were arraigned in what we call the magistrates' courts, and in the remaining three boroughs of the city, some 65,000 persons, thus making a total in round numbers of 240,000 people, not to speak of those who come into these courts through an informal method known as the summons, which is in the nature of an invitation from the judge who desires to inquire into some matter. Those who come in obedience to the summons are estimated to be somewhere in the neighborhood of 100,000 people. So that you have between 250,000 and 350,000 people brought into these so-called minor courts, and, doubtless, statistics of the courts of the country would rise to figures that would be at once interesting and appalling.

Now, of this large number that I have referred to, by far the great majority are charged with only comparatively petty offenses, and out of the 175,000 to whom I referred, 122,000 were charged only with offenses of one kind or another so comparatively minor in character that the police justices, or magistrates, as we call them

in New York, had complete and final jurisdiction over their cases, the remainder being held for trial in the higher courts for more serious offenses. So that the point I am calling to your attention at the outset is, that when you are dealing with thousands and thousands of people, it is perhaps more important that the administration of justice of those courts by those judges should be sound, and more advanced than even in the higher courts.

Now, the difficulty about the so-called inferior court is, that it usually receives the least attention at the hands of the state. You go to any great city abroad and you usually find a genuine temple of justice erected for the purpose of holding courts, but go into a police court in the great cities of this country and you are at once repelled by the bad arrangement of the court room, by the noise and confusion, and usually by the lack of dignity. The states (meaning thereby the government) seem to think, ordinarily, that the last place that should have serious attention is the court room where the great majority of the people must go, and the scene in many police courts is not that of a deliberate and careful investigation, but that of a jail delivery to get rid of everybody as soon as possible, either by discharge or commitment, and be done with. It is, however, in these courts that great numbers of our population gain their impressions of American justice. There ought to be not only the best physical surroundings, but the most careful deliberation on the part of those charged with the administration of justice.

That leads me to the first thing that I happen to think of, the haphazard disposition by many men in these positions and the lack of systematic study of the problems before them. Take the two great evils which I shall not attempt now to discuss scientifically, the evils—drunkenness and vagrancy, and within the classification of vagrancy, include not merely the drunkard or the man who does not support himself, but also those who live in vile ways. I venture to say that in the great number of inferior courts of the country, the ordinary disposition is to ask the police officer whether the man was drunk, and if so, fine him and have done with it; or, in case of a vagrant, ask whether the man has no friends nor family, and if so, send him to the local jail, workhouse or penitentiary. That is not going to benefit the people. The problem of the inferior courts must be aided by the establishment of something in the nature of

farm colonies for paupers and beggars, where each one shall be compelled to work for the benefit of the state, and not to return as they do to New York, in the winter time, and say to the magistrate "I would like to be committed for three months," and have the magistrate pleasantly commit the gentleman.

There is lack of thought upon that proposition, with the result that there is a great burden of taxation visited upon citizens of every great community, because these problems are not worked out either scientifically or in a common sense way.

Similarly, the problem of drunkenness must be handled along more advanced lines before we can obtain satisfactory results. Now, one of the methods of handling these cases where there is any effort at all to apply it, is that known as probation, which has no doubt been discussed at your meetings within the last day or two. The magistrates of New York have applied the probation system to cases of drunkenness and cases of husbands who have failed to support their wives. Instead of putting these men in jail, where they necessarily continue to be a burden, the effort has been to make them "work out their salvation" and gain their freedom from the court and its judge by conducting themselves properly; and the actual result of successful probation is to make a man support his family, and thereby to relieve the community of the support, both of his family and himself. Therefore, I would say that the system should be applied generally throughout the country.

The commission to which I have just referred has made a recommendation which I imagine is new, and it is along the line of separating, so far as may be, the innocent or the young from the more hardened and the adult, and, therefore, a departure has been recommended, and I believe will shortly be adopted by the legislature—a departure in the cases which, for want of a better name, we may call cases of domestic relations. The laws vary in the different states, but ordinarily a woman goes into a police court, and there she usually asks that an order be made that her husband shall support her. Often she brings her children with her because there is no one in whose care she can leave them. She should not be compelled to be at the police court at the same time with the criminals and the derelicts. Therefore, the commission already referred to, has recommended that for the hearing of such cases, and all cases where the law places an obligation to support an aged or infirm relative,

there shall be held a separate court or part of the court, entirely disassociated from the ordinary criminal routine.

Another point which is obvious should be emphasized all over the country by those interested in the subject. Long ago the principle was established that men and women waiting to be heard in criminal courts should be separated; that they should be kept in detention places, whatever they might be, jail, pens, etc., in different places, and yet it is remarkable how carelessly that is observed; and there should be in every state a statute sufficiently stringent to impose an affirmative duty upon every public officer whose duty it is to be in the position of a detainer, to see, first, that men and women should be absolutely separate; and, secondly, that when a young man or young woman is brought to the court, so far as practicable, and so far as the physical situation will permit, they should be kept completely away from the older and hardened offenders.

Now, there is another thing to which I want to call your attention. It has to do, perhaps, not so much with the court itself as to that which leads people to the court. In this country we arrest entirely too many people, and arrest them for too many petty and foolish things. I do not know how it is with you—I assume it is the same here in Philadelphia as it is in New York—but I have no doubt no one of these distinguished auditors on the platform can walk abroad unless he violates some ordinance prescribed by somebody. Now, the result of it is that throughout the country the police—no fault of theirs in performing their duties—are charged with the duty of making a great number of arrests for offenses in cases in which, on the Continent and in England, no arrests would be tolerated for a moment. In New York, according to the statistics of 1908, almost 52,000 people out of the total to which I called your attention, were arrested for the violation of what we call ordinances, that is to say, local regulations enacted by our board of aldermen, and proper regulations relating to health and safety of the community. Of the 52,000, not quite 5,000 people were arrested for the violation of our automobile law. So that, to be more nearly accurate, there were 47,000 people arrested. But why should that be? Why should a man charged with the violation of a regulative ordinance be taken through the streets if he can be satisfactorily identified. In line with what I have just stated, a recommendation has been made, which I hope will be followed and which I would like to see everywhere in this

country, charging the local police authorities with the duty of making appropriate rules and regulations, for a system of identification. These rules, it is hoped, will avoid the possibility of abuse or corruption, and are to provide that any person, by conforming to those rules,—whether in the nature of a card of identification or otherwise—may be summoned to court by the police officer, as is done on the Continent instead of being arrested forthwith; and the result of such a system will be that a very much less number of persons will be arrested than are now. There are many things I would say to you if I had the time, but there are perhaps just two more to which I shall call your attention.

One is that there should be an absolute prohibition by law, preventing any person who is acting in the capacity of a magistrate of one of these inferior courts from occupying an executive position in any political organization. Activity in political affairs may not necessarily indicate a failure on the part of the judge properly to perform his duty, but even if it does not, the people who come into his court, into this minor court, must under no circumstances believe that anything prevails in his court by way of purchase or influence, and that the only thing that does prevail is the application of the law the same to him as to the man who is next to be arraigned.

Now, the Governor tells me that there are twenty-eight or twenty-nine courts of magistrates here. In the City of New York, outside of one branch of our court, we have now thirty-two. We will shortly have two more. The more or less haphazard administration, is due, in a great measure, to the lack of system. No one will take from the judge the absolute right to adjudicate the case before him in accordance with his conscience and best judgment, and no one would deprive the judge of the exercise of his judgment in individual cases, but it is a mistake to have these courts less systematic and orderly than the higher courts are required to be.

It seems to me in those communities where there are many magistrates and many courts, there ought to be a central head or chief judge, who should be personally chargeable with the supervision of the administrative features of the courts, to investigate the manner in which the clerks and other employees of the court perform their duties, because the clerks and other employees are the ones who come in direct contact with the people.

There is very much more I would like to say to you, but I realize that it is getting late, and I can only say that I sincerely hope that there will develop in this country a growing interest in these courts, for, trite as the expression may be, these are the courts of last resort to most of our citizens, and certainly in great cosmopolitan communities like New York, at least, those who come here from other shores as well as those who have lived here for many years, know no other standard of American justice except what they find there, and for that reason no subject should command, on the part of all good people, a keener interest or more profound attention.